

OLIN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

In the Matter of the Appointment of a
Custodian for the Law Practice of

LORI E. DEVENY

Case No. 18CV48680

**MOTION FOR ORDER TO INSURE
COMPLIANCE WITH COURT ORDER**

Movant Stephanie Volin (Movant), a member of the media acting in the public interest, respectfully moves for an order to insure the Oregon State Bar's (OSB) compliance with the Limited Judgment entered in this case on October 25, 2018. The OSB has failed to timely comply with the court's order under ORS 9.705 *et. seq.* to take immediate possession of the law practice and client property held by former attorney Lori E. Deveny.

I. FACTUAL BACKGROUND

On October 25, 2018 this court ordered that the OSB:

Shall take immediate possession of Deveny's lawyer trust account and all client property, including legal files, electronically stored information and all other data of any type and kind, client trust funds, and any other client property, as well as books, records, funds, and property used in Deveny's law practice. [emphasis added]

This court also ordered that the OSB:

Shall serve a certified copy of this limited judgment on all banks or financial institutions where Deveny maintained either business or operating accounts or a client trust account. Pursuant to ORS 9.725, such service shall immediately operate as a modification of any agreement of deposit between such bank or financial institution and Deveny and any other party to the account so as to make the Oregon State Bar an authorized signer on any professional or trust account maintained by Deveny.

The OSB's failure to comply with the order is established by the OSB's own testimony in this case as well as materials available on the OSB's website and in other public records.

At the hearing of September 12, 2019, OSB counsel Susan Alterman stated that, in the time since the Bar overtook Deveny's practice in late 2018, "The Bar has collected all of the files from Ms. Deveny's office. Some were delivered by her to Mr. Mackeson, who then delivered them to the

MOTION FOR ORDER TO INSURE COMPLIANCE WITH COURT ORDER - 1

1 Bar.”¹ Ms. Alterman stated that Deveny’s “operating account was overdrawn, and there was
2 \$3008.65 in her IOLTA account,” and stated that the OSB “requested from Mr. Mackeson
3 accounting records and computers,” that “were not delivered.” Ms. Alterman further stated that “We
4 don’t have any way to tell which clients that money came from, because the deposits were made by
5 Ms. Deveny without indication of which client they were for.”²

6 On April 12, 2019 OSB General Counsel Amber Hollister presented a Client Security Fund
7 claim against Deveny for approval which stated that the OSB was still requesting – and not receiving
8 – files from Deveny in March 2019 [**Exhibit A** page 4].³

9 The record of Multnomah probate case No. 17PB09149 (a case brought by Deveny to dispose
10 of a deceased client's estate, more than two years after the client’s death) shows that the OSB allowed
11 Deveny to make withdrawals from their shared IOLTA⁴ in January 2019.

12 Despite Ms. Alterman's representations to the court, an accounting in 17PB09149 shows that
13 Deveny withdrew \$39,179.23 from their shared IOLTA on or after January 8, 2019 and transferred
14 the funds to an estate account that Deveny had opened. [**Exhibit B** pages 4 and 5]. Deveny later paid
15 herself \$10,114.89 from that estate account.

16 The above are provided as representative examples of the OSB’s failure to secure Deveny's
17 practice and account for the client property in Deveny's control. There are more examples available
18 to help resolve any question Ms. Alterman may raise in her objection, and likely many more
19 examples that have not yet been uncovered.

20 **II. ARGUMENT**

21 Deveny withdrew nearly \$40,000 from their shared IOLTA at a time when the OSB claims it
22 did not “have any way to tell which clients that money came from.” If the OSB did not know whose
23 money was in their shared IOLTA, the OSB should not have allowed Deveny to take \$40,000 of it
24 for any reason, but in particular *not* for a case in which she had a personal financial interest.

25 ¹ Hearing audio at 8:33:40.

26 ² Hearing audio at 8:36:48 to 8:39:25.

27 ³ Also of significance in that matter is that at the time of writing of Exhibit A, Deveny was still acting as
28 trustee of her former client’s income cap trust.

⁴ The Limited Judgment operated “as a modification of any agreement of deposit between such bank or
financial institution and Deveny and any other party to the account so as to make the Oregon State Bar an
authorized signer on any professional or trust account maintained by Deveny,” i.e. the OSB did not
replace Deveny as the only authorized signer, the OSB was added as a co-signer.

1 If Ms. Alterman's claim regarding their shared IOLTA is true, as a co-signer, the OSB may
2 be liable for conversion of clients' funds. In the alternative, Ms. Alterman's claim is false.

3 Movant understands that there is some debate regarding the legal definition of the word
4 "shall," and that "take" can mean "to seize" *or* "to gain or receive into possession." However, as has
5 been ordered in other custodianship cases, it is clear that the court's directive that the OSB "shall
6 take immediate possession" of Deveny's practice was an imperative command for them *to promptly*
7 *and physically go to the premises and seize her practice.*

8 At the time of this case's filing, Deveny was suspected of conversion of hundreds of
9 thousands of dollars of clients' funds. Given the OSB's experience with similarly unfolding and
10 expansive matters, it is incomprehensible that they misunderstood the court's order to mean that,
11 rather than immediately seizing Deveny's law practice, they should instead lackadaisically allow
12 Deveny to surrender it at her leisure, and only when it served her ongoing interests.

13 **III. CONCLUSION**

14 The OSB failed to follow the court's imperative commands in this matter, leaving former
15 clients, known and unknown – *and* the public – vulnerable to ongoing misconduct and deceit.

16 Allowing the OSB, *a state agency*, to fail or refuse to comply with court orders sends a
17 message to Deveny's former clients that their interests are not being protected and are not of
18 importance. *It also sends a message to the public that the OSB is above the law.*

19 The court has already issued very clear imperative commands in this matter; and for the
20 foregoing reasons, Movant prays that the court grants this motion and issues an Order to Insure
21 Compliance with Court Order.

22 Respectfully submitted on this 24th day of October, 2019.



23 Stephanie L. Volin
24 29 South Valley Road
25 West Orange, NJ 07052
26 (973) 936-0687
27 sllvolin@gmail.com
28

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 12, 2019
From: Amber Hollister, General Counsel
Re: CSF Claim No. 2019-08 Deveny (Shorten)

Action Requested

Consider Client Security Fund Committee's recommendation that the board grant claimant Barbara Shorten's claim of \$50,000 in the matter of CSF Claim No. 2019-08 Deveny (Shorten).

Discussion

Through her counsel, Stanley Gish, Claimant Barbara Shorten reports that she retained Ms. Deveny in September 2015 to represent her to recover damages for injuries sustained in a car accident on August 20, 2015. As a result of the accident, Ms. Shorten permanently lost the use of her legs and is now paraplegic.

Ms. Shorten recalls she agreed to a contingent fee agreement, in which Ms. Deveny was to receive one-third of the settlement. She never received a copy of the written fee agreement from Ms. Deveny.

On or about October 12, 2015, without Ms. Shorten's knowledge or consent, Deveny settled claimant's claim against MetLife and accepted a \$100,000 settlement check from Met Life in 2015. She deposited the check in her IOLTA trust account on or about October 27, 2015. Deveny did not disburse any of the \$100,000 check to Ms. Shorten or to OHSU, the other payee and lienholder listed on the check.

On or about January 21, 2016, Ms. Deveny settled an outstanding wage loss PIP claim for \$15,000 and applied the payment to Ms. Shorten's medical bills at OHSU. The PIP payment is not the subject of this claim.

Sometime in July 2018, after she had resigned from B from the bar, Ms. Deveny told Ms. Shorten that she received a settlement of some kind, but did not share the amount with Ms. Shorten. Ms. Shorten believed that Ms. Deveny would place any settlement proceeds in an income cap trust, with Deveny as trustee for Medicaid qualification purposes, but Ms. Deveny never did so.

The funds are no longer in Ms. Deveny's trust account and are alleged to have been stolen by Ms. Deveny. Through counsel, Ms. Deveny declined to participate in the CSF investigation and asserted her Fifth Amendment right against self-incrimination.

Ms. Deveny resigned Form B, effective July 26, 2018, while numerous disciplinary cases were pending.

At its March 2018 meeting, the Client Security Fund Committee reviewed Ms. Shorten's claim and unanimously voted to recommend that the Board reimburse her for \$50,000 of her loss. Ms. Shorten's claim would not ordinarily be eligible for reimbursement at this time, pursuant CSF Rule 2.1.6, because Ms. Deveny has not been found guilty of a crime and Ms. Shorten has not obtained a civil judgment against her. The Committee, however, voted to waive the requirement of CSF Rule 2.1.6 based on extreme hardship under CSF Rule 2.6, based upon her circumstances and the available evidence.

Mr. Gish seeks recovery of his attorney fees in this matter for an unknown amount from the CSF reimbursement. His hourly rate is \$240, and he has agreed to cap his fees at 20% of any funds recovered with a minimum \$1000 fee. Pursuant to Rule 2.5, the Committee considered the reasonableness of Mr. Gish's fee arrangement with Mr. Shorten and found that it was reasonable in theory, but the Committee was unable to determine whether the actual amount of the fee charged was reasonable because it had insufficient information. After the meeting, staff asked Mr. Gish for more information about his fee. He responded and stated he had spent 20.1 hours on the Shorten CSF matter, and his total fee, based on the agreed rate of \$240 per hour, is \$4,824.

Staff recommends that the board approve the claim, consistent with the CSF Committee's recommendation.

Client Security Fund Investigative Report

Re: CSF Claim No. 2019-8
Claimant: Barbara Jean Shorten
Lawyer: Lori Deveny
Investigator: Melissa May
Date: March 11, 2019

RECOMMENDATION

I recommended approval of Ms. Shorten's claim in the maximum allowable amount of \$50,000. The Claimant's loss related to this claim was \$100,000.

CLAIM INVESTIGATION SUMMARY

Lori Deveny was admitted to the Oregon State Bar in 1989. She was suspended on April 30, 2018, and her Form B resignation was accepted on July 26, 2018. Deveny is under investigation by federal and state law enforcement agencies.

Description of the Claim

Through her counsel, Stanley Gish, Barbara Jean Shorten alleges the following:

- Ms. Shorten was injured in a car accident on August 20, 2015. As a result of the accident, she permanently lost the use of her legs and now is paraplegic.
- Ms. Shorten retained Lori Deveny in September 2015. (No written fee agreement has been found; Ms. Shorten recalls agreeing to pay Deveny one-third of any amount recovered).
- Without Ms. Shorten's knowledge or consent, Deveny accepted a \$100,000 settlement check from MetLife in 2015.
- Deveny deposited that check in her IOLTA account.
- Deveny did not disburse any of the proceeds to Ms. Shorten or to OHSU (the other payee on the \$100,000 check).
- At the time of the application, Deveny had not returned Gish's messages regarding the subject matter of the Application for Reimbursement.¹

¹ Deveny has asserted her privilege against self-incrimination in this matter.

Investigation

I reviewed Ms. Shorten's Application for Reimbursement and attachments (including a copy of the \$100,000 check at issue), Ms. Shorten's OHSU patient billing ledger, and copies of text messages and emails between Ms. Shorten and Deveny. I also spoke with Ms. Shorten, her attorney (Stanley Gish), Deveny's attorney (Wayne Mackeson), OHSU billing department personnel, and Detective Brian Sitton of the Portland Police Bureau.

Work Performed by Deveny

We do not have access to Deveny's file(s) for Ms. Shorten.² Based on the information available, it appears that Deveny did the following.

1. Sought \$15,000 in wage loss benefits under Mr. Shorten's Personal Injury Protection ("PIP") coverage.³
2. Filed suit against the driver allegedly at fault and the owner of the other car (Multnomah Co. Case No. 17CV35905). That suit was dismissed "for want of prosecution" on January 4, 2018.⁴
3. Established an "income cap trust" (with Deveny as trustee) for Medicaid qualification purposes.⁵
4. Pursued a claim against MetLife (DBA Economy Preferred Insurance Company) for Uninsured Motorists ("UIM") Coverage. The \$100,000 Deveny received in settlement of the UIM claim is the subject of Ms. Shorten's Application for Reimbursement.

\$100,000 Settlement Check & Release

The "Paid Items Print" attached as Exhibit A shows a \$100,000 check issued by MetLife Auto & Home to "OHSI AND LORI DEVENY IN TRUST OF BARBARA SHORTEN." The check was dated October 12, 2015. Deveny endorsed the check by signing her name and adding "in trust for Barbara Shorten." A printed endorsement, purportedly by Oregon Health & Sciences University, also appears on the back of the check.⁶

² On 3/7/2019, Deveny reported via her attorney that "Ms. Shorten's file was sent to her new lawyer." As of 3/8/2019 date, Ms. Shorten's lawyer had not received the file

³ The \$15,000 PIP proceeds were applied to Ms. Shorten's medical bills at OHSU; this matter is not the subject of this claim.

⁴ This matter is not the subject of this claim.

⁵ This matter is not the subject of this claim. Ms. Shorten's attorney is attempting to remove Deveny as trustee of the income cap trust and to gain access to that account.

⁶ According to Detective Sitton, the OHSU billing department does not have a record of endorsing the check, and cannot find a record of the number referenced in the endorsement. They also indicated that it is not their usual practice to endorse a check and return it to a third party, such as Deveny, for deposit.

The “Receipt and Release under Uninsured Motorists Coverage” attached as Exhibit B is dated September 21, 2015. It was signed by “witnesses” but was not signed by Ms. Shorten.

According to Detective Sitton, Deveny deposited the \$100,000 check in her IOLTA account. Exhibit A shows that the funds were paid on October 27, 2015.

Ms. Shorten did not receive any funds from that settlement. A review of the OHSU patient billing ledger for Ms. Shorten shows that no funds from any individuals (including Lori Deveny) were applied to Ms. Shorten’s bills. The \$15,000 PIP funds were applied to Ms. Shorten’s medical bills on January 21, 2016. The only other payments shown on the ledger were payments by medical insurance companies (Providence Health and Medicare).⁷

Detective Sitton indicated that the balance in Deveny’s IOLTA account is minimal. Thus, it appears that Deveny converted \$100,000 of Ms. Shorten’s funds.

Efforts to Collect

Stanley Gish attempted to contact Deveny to discuss this matter but did not receive a response. Public records indicate that, although Deveny owns a home in Portland, there are foreclosure actions and multiple civil suits pending against Deveny.

Timeline Summary:

8/20/2015	Auto Accident
Sept. 2015	Shorten retained Deveny
10/12/2015	MetLife issued \$100,000 check for UIM coverage
10/27/2015	\$100,000 deposited/funds paid to Deveny’s IOLTA account
2017-2018	Various text messages between Deveny and Shorten (mostly re: income cap trust transactions)
4/30/2018	Oregon Supreme Court suspended Deveny’s license to practice law
5/27/2018	Deveny signed Form B resignation
c. July 2018	Deveny told Shorten that she received a settlement (unclear whether she was referring to the UIM settlement or settlement of the matter described in Multnomah Co. case no. 17CV35905)
7/26/2018	Oregon Supreme Court accepted Deveny’s Form B resignation
10/25/2018	Deveny’s last known communication with Shorten (via text message)
Dec. 2018	Detective Sitton informed Shorten of the \$100,000 check deposit (and lack of corresponding disbursement)
2/12/2019	Shorten filed CSF Application for Reimbursement

⁷ The ledger shows a \$0 balance. Ms. Shorten indicated that the phone calls from collection agencies have tapered off over the last few months; it is unclear whether there are additional medical debts or collection matters at this time.

FINDINGS AND CONCLUSIONS

1. Claimant Barbara Jean Shorten is the injured client, and her loss was caused by Lori Deveny's dishonest conduct. CSF Rules 1.4, 2.1.1, and 2.1.2.
2. Claimant's loss is not covered by any similar fund in another state. CSF Rule 2.1.3.
3. Claimant's loss was not incurred by a financial institution covered by a "banker's blanket bond" or similar insurance or surety contract. CSF Rule 2.1.4.
4. The loss arose from, and was because of, an established lawyer-client relationship. CSF Rule 2.1.5.
5. Deveny has not been found guilty of a crime at this time, nor has Ms. Shorten obtained a civil judgment against Deveny. I recommend that the committee waive CSF Rule 2.1.6, however, as discussed below.
6. Claimant has made a good-faith effort to collect the amount claimed. CSF Rule 2.1.7.
7. Claimant's Application for Reimbursement was timely (filed within two years of the date she learned of the loss). CSF Rule 2.1.8.
8. Claimant's loss arose from the lawyer's practice of law in Oregon. CSF Rule 2.1.9.
9. CSF Rules 2.2 – 2.4 do not apply. Claimant is not seeking reimbursement of a legal fee paid, has not received equivalent legal services by another attorney without cost to the Claimant, and is not seeking attorney's fees or other items listed in CSF Rule 2.4.
10. Claimant retained attorney Stanley Gish to assist with this claim. A copy of their fee agreement was submitted with the Application for Reimbursement and is attached as Exhibit C. Gish's rate is \$240/hour, subject to a cap of 20% of any funds recovered. The fee agreement appears reasonable, and I recommend that the CSF committee approve the payment of the fee from the award. CSF Rule 2.5.
11. Although the committee could deny the claim because CSF Rule 2.1.6 has not been satisfied at this time, approval of the claim in the amount of \$50,000 is appropriate because Ms. Shorten has suffered extreme hardship, and the circumstances are special and unusual. CSF Rule 2.6. I recommend that the committee waive CSF Rule 2.1.6. Based on the volume and value of claims against this lawyer, it seems unlikely that she will be able to satisfy any civil judgment in Ms. Shorten's favor. It likely would be a waste of resources for Ms. Shorten to pursue a civil claim at this time.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Probate Department

Case No. 17PB09149

In the Matter of the Estate of
KATHRYN CORINNE KENNEDY,
Deceased.

**FIRST AND FINAL ACCOUNTING
AND PETITION FOR GENERAL
JUDGMENT OF FINAL
DISTRIBUTION**

(ORS 116.083)

Filing fee: \$281.00 (ORS 21.170(2)(b))

Lori E. Deveny, Personal Representative of the Estate of Kathryn Corinne Kennedy,
presents this *First and Final Accounting and Petition for General Judgment of Final
Distribution*, covering the period from December 1, 2017 through February 27, 2019.

1.

Bonding. No bond has been required in this estate because the bond was waived by the
Limited Judgment for Probate of Will and Appointment of Personal Representative, signed by
the Honorable Katherine Tennyson on December 1, 2017.

2.

Restricted Assets. The asset of the Estate – the estate account at Wells Fargo Bank – is
restricted by the *Order Approving Petition for Instruction and Requests Therein* signed by the

1 Honorable Katherine Tennyson on December 10, 2018.

2 3.

3 **Asset Schedule.** Attached and marked as Exhibit 1 is the Asset Schedule, which is a
4 complete and accurate statement of all assets owned by the Estate at any time during the
5 accounting period, together with the Personal Representative's estimate of the value of each
6 asset.

7 4.

8
9 **Receipts and Disbursements.** Attached and marked as Exhibit 2 are schedules of funds
10 received and disbursed from the Estate's depository accounts. As discussed further in paragraph
11 6.f., the Personal Representative also does not provide a ledger for her IOLTA account.

12 5.

13 **Vouchers and Depository Statements.** There are no vouchers. All disbursements were
14 electronic. Attached and marked as Exhibit 3 are depository statements. Not all supporting
15 documentation is provided. As discussed further in paragraph 6.f., the Personal Representative
16 also does not provide a ledger for her IOLTA account.

17 6.

18
19 **Narrative Description of Changes During the Accounting Period.** During the
20 accounting period, the following changes in assets or financial circumstances occurred:

21 **a. Real Property: 6104 SE 103rd Avenue.** The Personal Representative sold the
22 decedent's residence, located at 6104 SE 103rd Avenue on August 17, 2018 for \$190,000.00.
23 After payment of realtor commissions, closing fees, mortgages, and the Department of Human
24 Service's claim against the estate, the net proceeds from the sale were \$35,641.07. Lawyers
25

1 Title of Oregon issued a check for \$35,641.07 to the Estate of Kathryn Kennedy and this office
2 held the check until the Personal Representative opened the restricted estate account at Wells
3 Fargo. After the Personal Representative opened the Estate Account, the Personal
4 Representative deposited the proceeds of the sale into the Estate Account. The *Final Seller's*
5 *Statement* is attached as Exhibit 4.

6 **b. 1991 Honda Accord.** The Personal Representative sold the decedent's 1991
7 Honda Accord on October 6, 2015 for \$1,000.00 and deposited the proceeds into the Personal
8 Representative's Interest on Lawyer Trust Account (IOLTA). After opening the Estate Account,
9 the Personal Representative transferred the proceeds from the sale of the Honda from the
10 Personal Representative's IOLTA to the Estate Account. The *Vehicle Bill of Sale* is attached as
11 Exhibit 5. (The Personal Representative sold the vehicle prior to her appointment as personal
12 representative. Pursuant to ORS 114.255, the powers of a personal representative may relate
13 back in time to give the acts of the personal representative occurring prior to appointment the
14 same effect as those occurring thereafter.)

15
16
17 **c. Household Items.** The Personal Representative hired Kevin Bowers Estate Sales
18 and Appraisals to clean out the decedent's home and hold an estate sale. The estate sale grossed
19 \$2,338.00. (The value of the estate's household items has been adjusted on Exhibit 1 to
20 \$2,338.00, from the \$572.37 listed on the inventory.) After Mr. Bowers' commission and costs
21 associated with the house clean out, such as multiple trips to the dump, the estate netted
22 \$572.37. The Personal Representative deposited the proceeds, \$572.37, into the Personal
23 Representative's IOLTA. Documentation regarding the estate sale is attached as Exhibit 6. (The
24 Personal Representative held the estate sale prior to her appointment as personal representative.
25
26

1 Pursuant to ORS 114.255, the powers of a personal representative may relate back in time to give
2 the acts of the personal representative occurring prior to appointment the same effect as those
3 occurring thereafter.)

4 After opening the Estate Account, the Personal Representative transferred the proceeds
5 from the sale of the household items from the Personal Representative's IOLTA to the Estate
6 Account. The remaining household items – the specifically bequeathed Maplewood Secretary
7 (and its contents) and Maplewood hutch/cabinet and its contents – are ready for distribution.
8

9 **d. Cash.** The decedent had \$1,583.37 in cash. The Personal Representative
10 deposited this cash into the Personal Representative's IOLTA. After opening the Estate
11 Account, the Personal Representative transferred this cash to the Estate Account.

12 **e. US Bank Account.** The decedent had a checking account at US Bank (#...5145),
13 with a balance of \$547.18, as of her date of death. On February 26, 2019, the Personal
14 Representative paid US Bank \$204.00 for copies of bank statements, closed this account, and
15 deposited the remaining funds - \$123.42 - into the Wells Fargo Estate account. (The Personal
16 Representative had previously deposited \$382.42 of her own funds into her IOLTA, as being
17 earmarked from the US Bank account. The Personal Representative recognizes that her failure
18 to close the US Bank account prior to February 26, 2019 cost the Estate \$55.00 in dormant
19 service charges and necessitated \$204.00 in bank statement fees, for a total of \$259.00 in
20 unnecessary fees from this account. Therefore, she does not seek reimbursement of the \$382.42
21 of her own funds.)
22

23 **f. Lori Deveny IOLTA.** As discussed above, the Personal Representative
24 deposited the Honda sale proceeds, household items sale proceeds, \$382.42 of her own funds
25
26

(representing the balance in the US Bank account), and the decedent's cash into the Personal Representative's IOLTA. After the Personal Representative opened the Wells Fargo Estate Account, the Personal Representative transferred these funds to the estate account. The Personal Representative does not have a ledger for her IOLTA.

g. Wells Fargo Estate Account. The Personal Representative opened the restricted Wells Fargo Estate Account on January 8, 2019 and deposited the house sale proceeds, vehicle sale proceeds, household item sale proceeds, cash, and her own funds (as discussed above) into the Estate Account as follows:

House sale proceeds	\$35,641.07
Honda Accord sale proceeds	\$ 1,000.00
Household item sale proceeds	\$ 572.37
Cash	\$ 1,583.37
Personal Representative's funds	\$ 382.42
TOTAL	\$39,179.23

(A schedule of receipts for this account is attached as Exhibit 2, as referenced in Paragraph 4 above.)

7.

Fiduciary Disclosures. The personal representative makes the following fiduciary disclosures:

a. Resignation from the Oregon State Bar. As disclosed in the *Petition for Instruction*, the Personal Representative is no longer eligible to act as the Personal Representative pursuant to ORS 113.095(4). Per the *Order Approving Petition for Instruction and Requests Therein*, the Personal Representative was authorized to continue to act as Personal Representative, with restrictions.

b. Interest on Lawyer Trust Account. As disclosed in the *Petition for Instruction*

1 and this final accounting, the Personal Representative deposited Estate funds into her IOLTA.
2 Pursuant to the Oregon Rules of Professional Conduct, an attorney must use separate bank
3 accounts to maintain separate estate accounts. The Personal Representative did not do this.

4 8.

5 **Request for Reimbursement.** The Personal Representative requests reimbursement for
6 expenses of administration she has advanced on behalf of the Estate, totaling \$10,114.89. These
7 expenses include funeral expenses, costs associated with maintain and securing the property,
8 costs associated with preparing the house for sale, and the fiduciary education class. A
9 spreadsheet of these expenses, along with supporting documentation, is attached as Exhibit 7.
10 Some of the invoices reference Angi McFarland, the real estate agent selling the home.
11

12 9.

13 **Expenses of Administration.** Other than attorney fees and a final Portland Water
14 Bureau bill in the amount of \$780.39, no remaining claims or expenses of administration are due
15 from the Estate and all creditors of the decedent and of the Estate have been paid in full.
16

17 10.

18 **Taxes.** All Federal and Oregon income taxes, estate taxes and personal property taxes, if
19 any, have been paid and all required tax returns have been filed. The Personal Representative
20 represents that no final formal determination has been made regarding the decedent's income tax
21 liability, and the Oregon Department of Revenue and the Internal Revenue Service have three
22 years to recover any tax due from the beneficiaries.
23

24 11.

25 **Reserve.** The Personal Representative requests authorization to establish a reserve of
26

1 \$2,500.00 for attorney fees for completion of the final accounting, distribution of the estate's
2 assets, and completion of other closing documents. Any balance remaining in the reserve will be
3 distributed to the residuary devisees under the Decedent's Will in their distributive shares.

4 12.

5 **Personal Representative's Fee.** The Personal Representative has waived her Personal
6 Representative fee.

7 13.

8 **Attorney Fees and Costs.** The Personal Representative represents that Caress Law, PC,
9 has rendered substantial services to this estate. The services are detailed in the *Statement for*
10 *Attorney Fees and Costs*, filed concurrently with this final accounting. Reasonable fees for the
11 services performed by Caress Law, PC for the estate thus far, equals the sum of \$17,989.84 and
12 costs in the amount of \$992.53, for a total of \$18,982.37.
13

14 14.

15 **Remaining Assets.** The remaining assets are ready for distribution.

16 15.

17 **Distribution.** The remaining assets are distributable in accordance with the decedent's
18 Will to the following devisees:
19

Devisee	Distribution
Lois Fulgham	Maplewood Secretary and its contents; 50% of residue of the estate
Elizabeth D. Garrett	Maplewood Hutch/cabinet and its contents; 50% of the residue of the estate

20 16.

21 **Notice.** Notice, as required by statute, will be provided to those persons entitled to
22
23
24
25
26

notice.

17.

Closing. The estate is ready for final settlement and distribution. The Personal Representative proposes the following distribution of the remaining funds:

Current balance of estate account	\$ 39,302.89
Portland Water Bureau	\$ (780.39)
Lori Deveny	\$ (10,114.89)
Caress Law fees and costs	\$ (18,982.37)
Caress Law reserve	\$ (2,500.00)
Funds Remaining for Distribution	\$ 6,925.24
Lois (50%)	\$ (3,462.62)
Elizabeth (50%)	\$ (3,462.62)
Funds Remaining in Estate Account	\$ -

WHEREFORE, the Personal Representative prays for a general judgment of final distribution as follows:

- A. Approving the first and final accounting;
- B. Authorizing Wells Fargo write the following checks or money orders from the restricted Estate account (#6491605413) and to send the checks or money orders to Caress Law, PC, so Caress Law, PC may make further distribution:
 - i. Portland Water Bureau: The Personal Representative asks the Court to authorize Wells Fargo to write a check/money order to the Portland Water Bureau (account number: 299-702-880-0) in the amount of the final bill for the decedent's residence. The balance, as of January 24, 2019, is \$780.39.
 - ii. Personal Representative Reimbursement: The Personal Representative asks the Court to authorize Wells Fargo to write a check/money order to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Lori Deveny in the amount of \$10,114.89.

- iii. Caress Law, PC: The Personal Representative asks the Court to authorize Wells Fargo to write a check/money order to Caress Law, PC in the amount of \$18,982.37 for reasonable attorney fees and costs.
 - iv. Lois Fulgham: The Personal representative asks the Court to authorize Wells Fargo to write a check/money order to Lois Fulgham in the amount of \$3,462.62.
 - v. Elizabeth D. Garrett: The Personal Representative asks the Court to authorize Wells Fargo to write a check/money order to Elizabeth D. Garrett in the amount of \$3,462.62.
 - vi. Caress Law, PC: The Personal Representative asks the Court to authorize Wells Fargo to write a check/money order to \$2,500.00, to be held in Caress Law, PC's Interest on Lawyer Trust Account as a reserve for attorney fees and costs for completion of the final accounting, distribution of the estate's assets and completion of the closing documents.
- C. Directing Caress Law, PC to hold the \$2,500.00 reserve in its Interest on Lawyer Trust Account until the completion of the final accounting, distribution of the estate assets and completion of the closing documents. Further directing Caress Law, PC, after payment of attorney fees from this reserve, to distribute any balance remaining in the reserve to the decedent's residuary beneficiaries in their percentage shares.
- D. Directing distribution of the specific bequests in the decedent's Will to the devisees entitled to them as set forth in Paragraph 15 above.

1 E. On filing receipts for the distribution, the Personal Representative will submit a
2 supplemental judgment to discharge the Personal Representative and close the estate.

3 I hereby declare that the above statement is true to the best of my knowledge and
4 belief, and that I understand it is made for use as evidence in court and is subject to penalty
5 for perjury.

6 Dated this 28th day of February, 2019.

7
8 
9 ~~Lori E. Deveny, Personal Representative~~

10 Personal Representative:

11 Lori E. Deveny
12 1020 SW Taylor St. STE 690
13 Portland, OR 97205
14 (503) 225-0440

15 Attorney for Personal Representative:

16 Caress Law, PC
17 Tammi M. Caress, OSB #112962
18 9400 SW Barnes Rd. STE 300
19 Portland, OR 97225
20 Telephone: 503-292-8990
21 Fax: 503-200-2985
22 Email: tammi@caresslaw.estate
23
24
25
26

1
2 I certify that on the 24th day of October, 2019, I electronically filed **MOTION FOR**
3 **ORDER TO INSURE COMPLIANCE WITH COURT ORDER** in Multnomah County
4 Circuit Court Case No. **18CV48680** via the e-filing system.
5

6 I further certify that the following parties or counsels of record shall be served via official
7 e-filing receipt:
8

9 Susan Alterman
10 Kell Alterman & Runstein LLP
11 520 SW Yamhill St Ste 600
12 Portland, OR 97204
13 salterman@kelrun.com

14 Amber Hollister
15 Oregon State Bar
16 16037 SW Upper Boones Ferry Rd.
17 PO Box 231935
18 Tigard, OR 97281
19 ahollister@osbar.org

20 Dated this 24th day of October, 2019.
21



22 Stephanie L. Volin
23 29 South Valley Road
24 West Orange, NJ 07052
25 (973) 936-0687
26 sllvolin@gmail.com
27
28